

प्रेषक,

आलोक कुमार जैन,
सचिव,
उत्तरांचल शासन ।

सेवा में,

1. समस्त प्रमुख सचिव/सचिव,
उत्तरांचल शासन ।
2. समस्त विभागाध्यक्ष/प्रमुख कार्यालयाध्यक्ष,
उत्तरांचल ।
3. समस्त जिलाधिकारी,
उत्तरांचल ।

कार्मिक अनुभाग-2

देहरादून: दिनांक: 31 अक्टूबर, 2003

विषय: दैनिक वेतन/संविदा एवं नियत वेतन पर नियुक्त कार्मिकों को विनियमितीकरण एवं वेतनमान ।

महोदय,

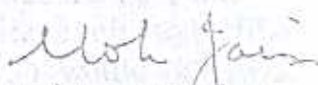
उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि शासन द्वारा दैनिक वेतन/नियत वेतन एवं संविदा पर नियुक्तियों पर प्रतिबन्ध के सम्बन्ध में शासनादेश संख्या: 1095/कार्मिक-2/2002, दिनांक: 06.2.2002 जारी किया गया था । राज्याधीन सेवाओं/पदों पर नियुक्तियों सुसंगत सेवा नियमावलियों में किये गये प्रावधानों के अनुसार किये जाने की व्यवस्था विद्यमान है । दैनिक वेतन पर नियुक्ति कर लम्बे समय तक चलाये जाने के उपरान्त जहाँ एक ओर उसके विनियमितीकरण की मांग की जाती है वहीं दूसरी ओर दैनिक वेतन कर्मियों का विनियमितीकरण किये जाने से अन्य अर्ह अभ्यर्थियों को पदों पर नियुक्ति के अवसर से वंचित करने की स्थिति उत्पन्न होती है, जो विधि सम्मत नहीं है और इस प्रकार की निगुनितियों से कार्य दक्षता प्रभावित होती है । उपरोक्त कारणों से मा0 उच्चतम न्यायालय द्वारा दैनिक वेतन की नियुक्तियों को उचित नहीं बताया है । (Air 1996 Supreme Court 1565 State of Himachal Pradesh V. Suresh Kumar Verma and another के उद्धरण संलग्न हैं) ।

2. दैनिक वेतन कर्मियों द्वारा प्रायः "समान कार्य के लिए समान वेतन" के आधार पर पदधारक की तरह वेतनमान दिये जाने के लिए अनुरोध किया जाता रहा है तथा इस आशय की रिट याचिकाएँ भी समय-समय पर न्यायालयों में प्रस्तुत की जाती रही हैं । मा0 उच्चतम न्यायालय ने हरियाणा राज्य बनाम तिलक राज व अन्य (AIR

2003 Supreme Court 2658) में यह स्पष्ट किया है कि वेतनमान किसी पद के साथ सम्बद्ध रहता है, दैनिक वेतन कर्मी कोई पद धारण नहीं करता है और उनकी स्थायी कर्मियों के साथ कोई समानता निर्धारित नहीं है। आगे यह भी स्पष्ट किया है कि समान कार्य के लिए समान वेतन की मांग के लिए यह आवश्यक है कि जिसके साथ तुलना की जा रही है उसके साथ पूर्ण समानता हो। दैनिक वेतन कर्मियों द्वारा जिस कार्य को आवंटित किया जा रहा है उस कार्य के लिए उनको न्यूनतम वेतन/भत्ते से अधिक का किये जाने की बाध्यता नहीं है। मा० उच्चतम न्यायालय के तिलक राज मामले में दी गयी व्याख्या की संदर्भिता उद्धरण संलग्न है।

उपरोक्त के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि कृपया दैनिक वेतन कर्मियों के विनियमितीकरण एवं वेतनमान दिये जाने के मामले में मा० उच्चतम न्यायालय के उपरोक्त निर्णयानुसार कार्यवाही करने का कष्ट करें।

भवदीय,


(आलोक कुमार जैन)
सचिव।

AIR 1996 Supreme Court 1565 State of Himachal Pradesh, Appellant V. Suresh Kumar Verma and another, Respondents.

We have heard the counsel on both sides. This appeal by special leave arises from the orders passed by the High Court of Himachal Pradesh. In this case in CWP No.722/93 dated 10.9.1993, the Division Bench of the High Court has disposed of the matters on the ground that the respondents were reengaged as Assistant Development Officers on daily wages pursuant to the direction by it. It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

Mr. Mahabir Singh, learned counsel for the respondents contended that there was an admission in the counter-affidavit filed in the High Court that there were vacancies and that, therefore, the respondents are entitled to be continued in service. We do not agree with the contention. The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee.

AIR 2003 Supreme Court 2658 State of Haryana and another, Appellants V. Tilak Raj and others, Respondents.

In a recent case this Court in State of Orissa and others V. Balaram Sahu and others (2003 (1) SCC 250) speaking through one of us (Doraiswamy Raju, J.) expressed the view that the principles laid down in the well considered decision of Jasmer Singh's case (supra) indicated the correct position of law. It was noted that the entitlement of the workers concerned was to the extent of minimum wages prescribed for such workers, it is more that what was being paid to them.

A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even

any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis or equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. NO material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

"Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

Judged in the background of aforesaid legal principles, the impugned judgment of the High Court is clearly indefensible and the same is set aside. However, the appellant-State has to ensure that minimum wages are prescribed for such workers and the same is paid to them. The appeal is allowed to the extent indicated above. There will be no order as to costs.

Order accordingly.